

***National Labor Relations Board***  
**OFFICE OF THE GENERAL COUNSEL**  
**Advice Memorandum**

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Pratt & Whitney Aircraft Div., Case 34-CA-5597; 5624; and 5644

Machinists District 91 & Local Lodge 1746, Case 34-CB-1562; 1578; and 1585

536-2554-0100 536-5075-0150-7575

These cases were submitted for advice on whether the parties' union-security clause violated the Act either as an unlawful restriction on resignation under *Pattern Makers v. NLRB*, 473 U.S. 95 (1985), or because of the failure to affirmatively state that the only lawful condition of employment is the payment of initiation fees and dues under *NLRB v. General Motors*, 373 U.S. 734 (1963).

The parties' union-security clause provided:

Section 1. Any employee who is a member of the Union on the day of the signing of this Agreement shall, as a condition of employment, maintain his/her membership in the Union thereafter for the duration of this Agreement.

Section 2. Any employee who is not a member of the Union on the day of signing this Agreement shall as a condition of employment, commencing no later than the thirtieth calendar day following the execution of this Agreement, or the thirtieth calendar day following the beginning of his/her employment, whichever is later, either (1) become a member of the Union and maintain his/her membership in the Union thereafter for the duration of this Agreement, or (2) tender to the Union a monthly agency or service fee (hereinafter "service fee") in an amount permitted by law, not in excess of the monthly membership dues of Union members.

We conclude that this union-security clause is unlawful on its face because it contains language which sets forth a correct statement of the law for new employees (i.e., that they are not required to join the Union but must pay a monthly agency fee) but then requires if employees become full members in the Union, they must remain permanent and full members of the Union for the duration of the agreement.

The first proviso of Section 8(a)(3) permits an employer and a union to agree to require "membership" as a condition of employment. In *Union Starch*, <sup>(1)</sup> the Board construed this statutory language to mean that the only condition of employment which could legally be enforced under union-security was the tender of uniformly required periodic dues and initiation fees. In *NLRB v. General Motors Corp.*, <sup>(2)</sup> the Supreme Court essentially agreed holding that the term "membership", as used in the Section 8(a)(3) proviso, encompassed only the obligation to pay initiation fees and dues, and not the obligation of full membership.

The above union-security clause contains more than the Section 8(a)(3) proviso language. It contains additional language defining "membership" as requiring more than the mere payment of fees and dues. While the clause language requiring an employee to "maintain his/her membership in the Union thereafter for the duration of this Agreement" is similar to the statutory 8(a)(3) proviso language, and arguably only sets forth the length of the union-security obligation, the clause, however, goes on to affirmatively require full membership and nothing less. In other words, unlike the situation in *NLRB v. General Motors*, supra, the term "membership" in this union-security clause cannot be interpreted to merely require the lesser obligation of paying fees and dues since that lesser obligation is later set forth as another, separate alternative. Since this

language also is not the statutory language of the 8(a)(3) proviso, it does not deserve statutory protection. Accordingly, complaint should issue, absent settlement, alleging that the above union-security clause is unlawful on its face.

R.E.A.

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<sup>1</sup> Union Starch & Refining Co., 87 NLRB 779 (1949), enf'd. 186 F. 2d 1008 (7th Cir. 1951).

<sup>2</sup> 373 U.S. 734, 742 (1963).